



Wisconsin Medical Society

Your Doctor. Your Health.

TO: Senate Committee on Judiciary, Corrections, Insurance, Campaign Finance Reform and Housing

FROM: Mark Grapentine, JD – Senior Vice President, Government Relations

DATE: November 10, 2009

RE: Opposition to Senate Bill 384

On behalf of nearly 12,500 members statewide, the Wisconsin Medical Society thanks you for this opportunity to register our opposition to Senate Bill 384.

The Society's Executive Committee of the Board of Directors met recently to discuss the issues underlying introduction of this bill. The Executive Committee adopted the following American Medical Association policy as the Society's:

H-515.988 Repeal of Religious Exemptions in Child Abuse and Medical Practice Statutes

Our AMA (1) reaffirms existing policy supporting repeal of the religious exemption from state child abuse statutes; (2) recognizes that constitutional barriers may exist with regard to elimination of the religious exemption from state medical practice acts; and (3) encourages state medical associations that are aware of problems with respect to spiritual healing practitioners in their areas to investigate such situations and pursue all solutions, including legislation where appropriate, to address such matters. (BOT Rep. H, A-90; Reaffirmed: Sunset Report, I-00)

Rather than help clarify the difficult issues surrounding religious practice and children's health, Senate Bill 384 appears to add more confusion. Granting a legal privilege to s.939.45 of the state statutes, with nine factors to determine reasonableness of choosing spiritual over medical care, could create an environment where prosecutors and parents are left wondering what the statutes hold. Prosecutors may level charges in almost any case involving religious decision-making where children are harmed because the evidence and legal arguments will center on the various reasonableness factors. Parents, too, could feel concerned over exercising a choice for spiritual healing due to the factors being an issue in nearly every case.

Thus, the state could be deprived of the ability to protect children in every instance where tragic harm occurs. Instead, the law could be changed to remove the exception of spiritual healing from the child abuse laws – a policy change the Society would support.

Thank you again for this opportunity. If you have any questions on this or any other issue, please feel free to contact me at any time.

TESTIMONY SUBMITTED BY THE NATIONAL ASSOCIATION OF SOCIAL WORKERS,
WISCONSIN CHAPTER IN OPPOSITION TO SENATE BILL 384 BEFORE THE SENATE
COMMITTEE ON JUDICIARY ON NOVEMBER 10, 2009

The National Association of Social Workers, Wisconsin Chapter strongly opposes SB 384.

Social work has a strong tradition of supporting client self-determination.

Social work has a strong tradition of supporting the cultural and religious practices families choose for themselves.

One might expect, then, that the Wisconsin Chapter of NASW would support a bill that appears to protect the right of parents to choose, on the basis of their religion, to seek spiritual treatment rather than medical treatment.

But this bill is not about freedom of religion. The debate must focus where it belongs: on protection of the lives and well-being of vulnerable children.

Wisconsin is already one of about 40 states that exempt a parent from prosecution of child abuse or neglect if the parent relied on prayer or spiritual treatment in lieu of medical care. Wisconsin statute 948.03 (6) provides that "A person is not guilty of an offense under this section solely because he or she provides a child with treatment by spiritual means through prayer alone for healing in accordance with the religious method of healing permitted under s. 48.981 (3) (c) 4. or 448.03 (6) in lieu of medical or surgical treatment."

Why is a new bill being introduced?

Although proponents of SB 384 might claim this bill addresses concerns with the current religious exception for medical care, it actually appears to **expand** the current exemptions. SB 384 will repeal Sec. 948.03 (6) and provide even more extensive privileges under 939.45 (5m). Currently, under 939.45 "the fact that the actor's conduct is privileged, although otherwise criminal, is a defense to any crime based on that conduct." In SB 384, provision 939.45 (5m) adds a criminal defense to parent's or guardians whose conduct is "in good faith and is a reasonable use of spiritual, prayer, or religious treatment in lieu of medical treatment" for a child. This provides a religious defense to criminal neglect, reckless endangerment, or reckless homicide.

What kind of childhood experiences does this bill impact?

The New York Times carried an article that included examples of cases that have been reported. Here are just three of them. (5)

Elizabeth King, a 12-year-old in Phoenix, developed a tumor near her knee in the fall of 1987. Her parents called in a Christian Science practitioner. By the time the local authorities learned of the girl's condition, the tumor had ballooned; one nurse compared it in size to two watermelons. She died four weeks later.

Natalie Middleton-Rippberger of Santa Rosa, Calif., 8 months old, exhibited influenza-like symptoms on Nov. 25, 1984. By Dec. 2, she was warm to the touch and her eyes were constantly crossed. By Dec. 6, she had continuous convulsions. On Dec. 9, she died of meningitis.

Robyn Twitchell, began crying, then screaming and vomiting, after a light supper on the evening of April 3, 1986. Despite home visits from a practitioner, who prayed for him and sang a hymn, his symptoms persisted. By April 8, he was having spasms, his eyes rolled up and he lost consciousness. That night, he died of what doctors diagnosed as a correctable bowel obstruction.

The American Academy of Pediatrics published a study in 1998 which examined 172 children who died between 1975 and 1995 in the United States in situations where parents used faith healing in place of medical care. Based on review of the children's conditions, the study concluded that 140 of these children had a 90% or better chance of survival, and an additional 18 children had more than 50% likelihood of survival. (4)

This bill is not about preserving parent's religious freedom, it is about allowing children to suffer needlessly based on *someone else's* religious beliefs.

Religious exemption laws, such as this bill, promote the belief that parents may withhold necessary medical care from their children based on religious beliefs. We believe that the interests of a child are foremost and there should be no exception to child abuse and neglect law based on religion.

The US Supreme Court stated that: "The right to practice religion freely does not include the liberty to expose the community or child to communicable disease, or the latter to ill health or death... Parents may be free to become martyrs themselves. But it does not follow they are free, in identical circumstances, to make martyrs of their children before they have reached the age of full and legal discretion...." (1)

In order to protect the best interest of children Wisconsin must eliminate spiritual treatment's exception to child abuse and neglect. Instead of SB 384, we support a bill currently being developed by State Representative Terese Berceau that would eliminate the current exception to child abuse and neglect law or spiritual or religious treatment of disease.

1. *Prince v Massachusetts*, 321 U.S. 158(1944)
2. *Wausau Daily Herald*, July 30, 2008
3. www.childrenshealthcare.org
4. *Asser and Swan*, "Child fatalities from religion-motivated medical neglect. *Pediatrics* 1998; 101: 625-629
5. *Margolick, D.* 8/6/90. "In child deaths, a test for Christian Science." *New York Times*

Children's Healthcare Is a Legal Duty, Inc.

Box 2604 • Sioux City, Iowa 51106 • Phone 712-948-3500

E-mail: childinc@netins.net • Web page: <http://www.childrenshealthcare.org>

To: Senate Committee on Judiciary, Corrections, Insurance, Campaign Finance Reform, and Housing

By: Rita Swan, President of CHILD

Re: SB384 lowers protection for Wisconsin children

CHILD is a national membership organization with Wisconsin members working to stop child abuse and neglect related to religious and secular belief systems. We urge your vote against SB384.

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Seeking carte blanche to withhold even lifesaving medical care from children, the church attempted to get a religious defense to homicide in 1994, but the Wisconsin legislature did not pass their bill (SB544).

In December, 2008, a judge ruled that Wisconsin parents who withheld medical care from their diabetic daughter must stand trial on reckless homicide charges and that 948.03(6) is not a defense to homicide.

In January, 2009, the press began reporting that the church was having a bill introduced to "clarify" the responsibilities of parents who rely on spiritual healing. That bill is now formalized as SB384.

It repeals 948.03(6), but extends a religious defense to all crimes against children when prayer or "religious treatment" are substituted for medical treatment. Such crimes include neglect at 948.21, physical abuse at 948.03, recklessly endangering safety at 941.30(1), and reckless homicide at 940.06.

SB384 places an exemption for faith healers in 939.45, the privilege chapter of Wisconsin's criminal code. This chapter states, "The fact that the actor's conduct is privileged, although otherwise criminal, is a defense to prosecution for any crime based on that conduct." Some situations in which the defense of privilege can be claimed are "when the actor's conduct occurs under circumstances of coercion or necessity," "when the actor's conduct is in defense of persons or property," "when the actor's conduct is in good faith and is an apparently authorized and reasonable fulfillment of any duties of a public office," and "when the actor's conduct is a reasonable accomplishment of a lawful arrest." Most of us would agree that such conduct should not be criminalized.

SB384, however, amends the section to add a privilege "when the actor's conduct is in good faith and is a reasonable use of spiritual, prayer, or religious treatment in lieu of medical treatment" for a minor child.

Instead of evaluating whether a parent acted as a reasonable person, the jury is saddled with the task of determining whether the parent reasonably and sincerely used prayer in lieu of medical treatment for a sick child in cases of criminal neglect, physical abuse, recklessly endangering safety, and reckless homicide. Current

Wisconsin law does not offer a religious defense to criminal neglect, recklessly endangering safety, or reckless homicide, but SB384 provides one, thus increasing the danger to Wisconsin's children.

SB384 goes on to define criteria that the jury must evaluate in determining whether the parents' reliance on prayer in lieu of medical treatment was reasonable. The bill does not indicate whether some of its criteria are more important than others, whether the facts weigh for or against a determination of reasonableness, or what to do if some criteria seem to contradict each other. In our view several are grossly inappropriate justifications for letting parents withhold medical care from children, and the ones that may be appropriate factors for a jury to consider are already in current law.

It is important to understand that SB384 is not about giving parents a right to pray, but about giving them the right to exclusive reliance on ritual or prayer "**in lieu of medical treatment**" for a sick child. (emphasis added) In CHILD's view the only times when it is reasonable to rely exclusively on ritual or prayer in lieu of medical treatment for a sick child are when the child has a trivial, self-limiting illness or after parents have promptly consulted a physician who has advised them that medical treatment is not likely to save the child's life or substantially enhance his quality of life.

Current Wisconsin law already gives parents the right to rely exclusively on prayer in both situations. Parents have no legal duty to obtain or continue with medical treatment in those cases or when an illness has no obvious symptoms.

In CHILD's view SB384 serves no useful purpose and greatly increases the danger to Wisconsin children. It creates a "privilege" in law for conduct that is "otherwise criminal." Wisc. Stat. 939.45 The privilege extends to criminal neglect, recklessly endangering safety, and even to homicide, none of which have religious defenses in current law.

Like many other states Wisconsin already has a reasonable person standard for criminal negligence and recklessness. See Wisc. Stat. 939.25(1) and 939.24(1). It should not create a reasonable faith healer standard, which has no precedent in any state code.

The Christian Science church often says that SB384 is not an exemption and prosecutors can still bring charges. It's true that they can still bring charges, but SB384 creates such a confusing mishmash for juries to consider that it would be very difficult to get convictions.



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Laurel Walker | In My Opinion

Grieving parents pushing to change blood-alcohol testing laws



Gary Porter

Ken and Shirley McKee kneel by a memorial for their son, Tim, who died in a November car crash in Washington County. The other driver is charged with being impaired at the time of the accident.

Posted: July 31, 2009

Kenneth McKee doesn't understand.

Two drivers, a crash, and one of them - their son - now dead.

What's fair for their son who can't speak for himself - a mandatory blood test for alcohol - isn't fair for the other?

"There's something wrong here," McKee says. "It's not right."

No, it doesn't feel right.

Ken and Shirley McKee's only son, Tim, 25, was killed instantly about 7 a.m. Nov. 14, just down the road past the family's two Town of Farmington farms on Washington County Highway H. He was headed to his day job at a sand and gravel company when his Saturn was broadsided by an SUV whose driver never stopped for a stop sign.

Jason M. Jacobs, 34, of Lomira has been charged with homicide by intoxicated use of a motor vehicle. A blood test taken three hours after the accident showed Jacobs with a 0.07 blood-alcohol concentration, high enough to indicate an illegal level at the time of the crash, the criminal complaint says.

Jacobs' defense attorneys are fighting to get that test thrown out - evidence that Washington County District Attorney Todd Martens describes as "critical to the state's case."

At issue is whether the consent that Jacobs gave for the test was invalid, either unconstitutionally obtained by coercion or because he was illegally detained at the time as claimed.

After two days of contradictory testimony from police and defense witnesses with the McKees and their supporters hanging on every word, and after briefs and counter-briefs, Washington County Circuit Judge Andrew T. Gonring will issue a written decision later this summer.

"I can't do much for my son anymore," McKee said, "but if we can change things because of what happened, what else can I do?"

Naturally the McKees want to see the charges against Jacobs stand. The senseless loss of Tim - "my buddy, my partner," Ken calls him - has left a huge emptiness in their lives, a hole that's filling up with tears still shed so easily by both mother and father.

But they are infuriated by another reality - a state law that automatically requires a blood-alcohol test of a driver killed in an accident, like their son, yet none that automatically requires a test of sobriety for a driver who survives a fatal crash.

Ken frames the logical thought: "If you had nothing to hide, you wouldn't mind having a blood test."

They've found a sympathetic ear in state Sen. Glenn Grothman (R-West Bend), who said he's prepared

to introduce a bill that could require a blood test of any driver in a fatal crash. Now, a test can be required only if there is probable cause to believe alcohol is involved - such as when a driver fails initial field sobriety tests.

"It seems strange that you can't demand a blood test when someone has done something so horrific," he said. The difference in this case, he noted, would be a homicide charge that carries a 25-year prison sentence or a traffic ticket for running a stop sign that carries a few-hundred-dollar fine.

"Given the dramatic difference, the government certainly has an interest in seeing which one of these it should be," he said.

Grothman said he's asked the attorney general to review his bill, one that could reasonably raise constitutionality questions. As tentatively drafted, Grothman's bill would not impose a mandatory blood test on drivers in non-fatal injury accidents unless there is probable cause to suspect alcohol was involved, he said.

The state's current "implied consent" law for anyone who gets behind the wheel imposes penalties on drivers who refuse a blood-alcohol test, Martens said, but he noted that probable cause for the test also is required.

Grothman would like to see the bill added to a proposed revamping of the state's drunken-driving laws - revisions that have been demanded by a public tired of the highway slaughter from impaired drivers, many of them multiple offenders.

To McKee, who says his employer requires a blood test after any on-the-job injury, the often fatal consequences of driving while drunk make a comparable blood test requirement every bit as, if not more, defensible.

The legal arguments - both in the Washington County criminal case and among state lawmakers - will go on, one way or another. So, too, does the heartache.

Shirley McKee often goes to bed early in tears, she said. During an interview this week, the couple looked out the windows of their farmhouse - Ken to the cornfield he planted alone this year, Shirley to the yard Tim so meticulously helped her tend.

"All you see is him, everywhere," she said.

Their dreams for him - and with him - are dashed. He'd been married barely a month when he was killed, and now they will never know the grandchildren he might have given them. They will never see him take over the farm, and already Ken knows he'll have to cut back his cattle herd by nearly half, to 80 head. He'll drive Tim's first tractor, but give up the new one he'd just bought.

The first \$1,000 Tim McKee Memorial Scholarship was awarded to an aspiring veterinarian graduating from Kewaskum High School this year, and the McKee family finds some solace in that effort, which honors Tim's commitment to farming. Efforts to build the fund, now at \$23,000, continue, and a memorial brat fry will begin at 9:30 Aug. 8 at Geidel's Piggly Wiggly in Kewaskum.

Ken McKee remembered how admired Tim was among farming friends. He was as kind to others as he was careful to the farm he tended. Then Ken sobbed as he thought of Tim's handprints left in the sandy floor of the nearby farm shed, where he'd scraped out fall leaves, a pet peeve, by hand.

"Everybody says it gets easier," Ken said. "I wonder when."

Call Laurel Walker at (262) 650-3183 or e-mail lwalker@journalsentinel.com



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Testimony



307 South Paterson Street, Suite 1
Madison, Wisconsin 53703
Phone: (608) 255-0539 Fax: (608) 255-3560

To: Members of the Senate Committee on Judiciary, Corrections & Housing

From: Tony Gbart, Policy Coordinator, Wisconsin Coalition Against Domestic Violence

Date: Tuesday, November 10, 2009

Re: Testimony in support of Senate Bill 332

Thank you for providing an opportunity to submit testimony in support of SB 332, and thank you to Senator Taylor and Representative Seidel for sponsoring this legislation. I represent the Wisconsin Coalition Against Domestic Violence (WCADV), the statewide voice for victims of domestic violence and the local programs in every county of our state that serve them.

Each year thousands of domestic violence victims in Wisconsin make the decision to break out of abusive relationships and achieve safety for themselves and their children. Over the years, the Wisconsin State Legislature has acknowledged domestic violence is relevant to important questions of family law. In 2003, the Legislature passed Act 130. One of the central provisions of 2003 Act 130 is a requirement that the court be informed if domestic violence has occurred in the family. This was one of the most significant reforms our Legislature has made to help courts understand the dynamics of domestic violence in custody disputes and its impact on children.

However, since that time, victims and advocates report that courts are not getting accurate information about domestic violence and how it impacts particular families. Our advocates across the state are seeing case after case in which guardian ad litem and custody evaluators misunderstand the dynamics of families or rely on inaccurate or unscientific studies or labels in conducting their assessments. WCADV supports SB 332 because it will help ensure that custody studies are treated with a level of consistency and scrutiny across the state. WCADV believes setting clearer expectations will assist courts in reaching conclusions based on fact. With a more rigorous fact-finding process in place, laws designed to protect victims and children can be applied in the spirit, and with the purpose, with which they were intended.

WCADV also supports the bill because it will require that custody studies be submitted to the parties in advance of being introduced into evidence. This will give parties necessary time to review and contest findings and better educate the court about the facts of their situations. This is especially important when the custody evaluation fails to properly account for domestic violence and its traumatic impact on children.

Thank you for your time and for the opportunity to submit testimony. If you have questions, please feel free to contact me at 608.255.0539 or tonyg@wcadv.org



Police Department

Edward A. Flynn
Chief of Police

November 9, 2009

Senator Jim Sullivan
State Capitol - Room 15 South
Madison, WI 53707

RE: SENATE BILL 375

Dear Senator Sullivan:

I am writing in regards to Senate Bill 375, which would allow for an exchange of records contained in CCAP to the Department of Children and Families and records contained in the statewide Automated Child Welfare Information System to the Director of State Courts.

Senate Bill 375 limits the exchange of these records between the Department of Children and Families and the Director of State Courts. I ask for your consideration in finding an acceptable level of access, with restrictions, to law enforcement agencies.

In the City of Milwaukee, 42 percent of victims and 69 percent of suspects in homicides have juvenile records. Something must be done to address the criminal activity our youth are engaging in. Access to these records would help the Milwaukee Police Department provide better service and effectively utilize targeted crime reduction strategies.

By providing law enforcement with access to juvenile records, officers would be able to know conditions of probation, and have a sense of who they may be dealing with when handling a potentially dangerous situation or making an arrest.

In addition, preventing access to these records can have an adverse impact when determining the placement of a juvenile. For example (under current law), an officer who picks up a juvenile for curfew violation asks the juvenile where they live. Without having access to these records, our officers do not know if the juvenile has been placed with a specific parent or placed in a foster home by the courts, and thus, we may be returning a juvenile to a home where they should not be.


I ask that you amend this Bill and provide limited access to juvenile court records for law enforcement purposes. I believe there could be a mechanism put in place that would allow law enforcement officers to have limited access, while at the same time, protecting the identity of juveniles with records.

I offer two suggestions for limiting the access to records among individual law enforcement agencies. One option would only allow specific command staff to have access; front-line officers would go through their chain of command and could only obtain information as it pertains to probation history and placement status. Another option would allow information to be filtered through another agency, such as the Director of State Courts, in order to provide only the specific information that officers need to effectively handle a situation or make an arrest.

SENATE BILL 375
NOVEMBER 9, 2009
PAGE 2

I appreciate you taking these suggestions under consideration as this Bill moves forward.

Sincerely,



EDWARD A. FLYNN
CHIEF OF POLICE

c: Senator Lena Taylor, Chair, Senate Committee on Judiciary, Corrections, Insurance, Campaign Finance Reform, and Housing
Members of the Senate Committee on Judiciary, Corrections, Insurance, Campaign Finance Reform, and Housing
Representative Dan Knodl

Children's Healthcare Is a Legal Duty, Inc.

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To: Senate Committee on Judiciary, Corrections, Insurance, Campaign Finance Reform, and Housing
From: Sarah Davis, Asst. Clinical Professor of Law,
Center for Patient Partnerships, UW-Madison Law School
608-265-6267
Date: November 9, 2009
Re: Opposition to SB384

As a health advocate and a lawyer I am concerned about the potential harm of SB384 on a vulnerable class of children. Children sick with life-threatening or serious chronic illnesses need their parents to provide them with access to needed, evidence-based medical health care.

We have already seen at least one tragic death of a child in our state due to the belief that our current laws permit parents to exclusively elect prayer or religious treatment in lieu of medical treatment when a child is gravely ill.

SB384 will create a general affirmative defense for the use of spiritual or religious treatment or prayer in lieu of medical treatment for children for all crimes against children including felony abuse (948.03), and reckless homicide (940.06). We must think of how the law works in practice – what behavior it encourages or discourages. Parents who believe in religious treatment will likely believe this affirmative defense justifies their action of withholding medical care for their extremely sick children. We must balance religious freedom with protecting children. This law tips the scales too far – children pay too high a price. Such a defense will probably mean that more children will go without needed medical care; more innocent children in our state will die.

Under this proposed bill, a jury must determine whether a parent reasonably used prayer in lieu of medical treatment for a sick child using a series of confusing factors. This puts citizens in the role of judging religious behavior. Under the current law – anyone can pray for a child to get well – but should be encouraged to seek medical care for that vulnerable child, in addition, when death or serious bodily harm may result. Wisconsin law already requires that symptoms be recognizable by an “ordinarily prudent parent” before a parent has a legal duty to get medical care.*

All citizens and children should have equal protection under the law. Wisconsin already has a reasonable person standard for criminal negligence and recklessness. See Wis. Stat. 939.25(1) and 939.24(1). We should not create a reasonable faith healer standard, which has no precedent in any state code. We do not need a defense to criminal conduct against vulnerable children.

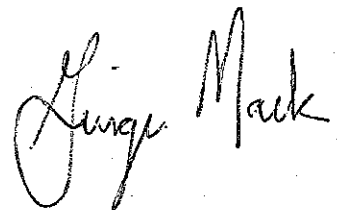
Let us respect prayer and protect vulnerable children. SB384 is no good for Wisconsin.

**Wis. Stat. 948.03 defining criminal child abuse stipulates that the caretaker must “[demonstrate] a conscious disregard for the safety of the child.” The crime’s standard jury instructions stipulate that the state must prove that the defendant knew that his conduct created a high probability of great bodily harm. Wis. Stat. 948.21 states that a caretaker commits criminal neglect when he “intentionally contributes to the neglect of the child.” Wis. Stat. 940.06(1) defines second-degree reckless homicide as “recklessly” causing a death and stipulates that the caretaker must be aware that his action or inaction causes risk of grave harm to the victim.*

Hello my name is Ginger Mack. I am a student at the University and I work with the Christian Science Student Organization on campus.

Having grown up as a Christian Scientist, I can attest to the fact that I was diligently cared for by my parents. I have seen firsthand that Christian Science parents respond promptly to the needs of their children and are able to seek medical help for their children when needed.

As a constituent, I feel that it is important to have legislation that is transparent and allows Christian Scientists to practice their faith, which includes providing the very best care for children and being accountable to the state and federal laws.

A handwritten signature in cursive script that reads "Ginger Mack". The signature is written in dark ink and is located in the bottom right corner of the page.

WELLINGTON

**Legislative Committee Testimony
November 10, 2009
Charles R. Wellington**

Good Morning,

My name is Charles Wellington. I live in Monroe, Wisconsin with my wife, Christine. We have lived there since 1979 and raised our children there. I am here today to speak in favor of SB 384.

Let me, if I may, begin with a brief history that may help give you a foundation for my viewpoint. Shortly after WWI, more than one doctor informed my grandmother that her reproductive system was severely impaired and that she would never be able to have children. She suffered with this diagnosis for several years when she heard about a physician who might be able to help her. He too, however, confirmed the diagnosis. While in his office, though, my grandmother noticed a book on his bookshelf entitled "Science and Health with Key to the Scriptures" by Mary Baker Eddy, the discoverer and founder of Christian Science. My grandmother inquired about the book and the doctor told her to take it – "it might help," he said. So, she did. Shortly after reading the book, my uncle was conceived and two years later, my mother was born. As a result of that healing, and others, my grandmother became a Christian Scientist, and raised my mother in the same way and I, not surprisingly, was also brought up in Christian Science.

As a child, my mother would turn to prayer for me and my brothers and sister in times of challenge, whether health-related or otherwise. Sometimes, if needed, a Christian Science practitioner would be called to assist with prayer. I experienced many healings this way.

In high school, I sustained a particularly severe back injury in wrestling practice. I saw a doctor at the insistence of my father, who was not a Christian Scientist. After undergoing a number of x-rays and tests, I was informed that my wrestling career, indeed my sports involvement, was over. Given that diagnosis, I asked my father if I could call a Christian Science practitioner. He agreed. Within a few weeks I was back wrestling, without any trace of the injury. After high school, I continued to be involved in intercollegiate athletics in college and have been physically active ever since.

I have continued to study and practice Christian Science because it has proven effective time and time again. As you have no doubt concluded, my wife and I also raised our children the same way.

Let me be perfectly clear, however, that nothing challenges one's beliefs more acutely than to rely on them in the care of one's children. Any parent with a sick or ailing child wants only one thing – the immediate and complete end of that child's suffering. Some parents turn to medicine for that, and that is fine. My wife and I turned to prayer for one reason – that we had found it to be effective and logically inferred that it would continue to be so.

By choosing this route we hoped to accomplish two things: 1. the alleviation of the physical problem and; 2. teaching our children, by experience, that God indeed was "a very present help in trouble."

There were occasions when we sought medical care for a problem that didn't resolve quickly. This usually provided only temporary relief, however, and eventually the permanent solution came through a better understanding of our spiritual nature as gleaned from prayer. Words are quite inadequate to explain what this approach has meant to me and my family.

SB 384 simply permits a parent who may face criminal charges regarding his or her decisions relating to a child to explain to a trier of fact why a decision was made. This simply reflects basic fairness. There is a world of difference between using prayer for a child's illness because it has proven effective in the past and blindly martyring one's child in the name of religion. No one can rationally support the latter, but the former is critical when weighing these issues.

The spiritual education of children by parents is fundamental. It is wedded to the parent-child relationship. With a Christian Scientist, that education is woven into the fabric of their experience by practice. The formative years are some of the most critical to spiritual education and children are incredibly receptive. Jesus was well aware of this when he honored the innocence and receptivity of the "child-like" thought. When spiritual healing is employed, it is the logical culmination of what a child is taught every day in the home and what the child is learning in Sunday School – that a deeper understanding of God and our relationship to Him – heals.

The issue is extremely important for our time. The world seems to be spinning ever faster toward a secular disposition. Christian Scientists do not ask for any special treatment or protection. They would readily acknowledge that the welfare

of children is paramount. SB 384 strikes a fair balance in preserving the welfare of children while not creating an atmosphere that would have a chilling effect on spiritual healing. I respectfully submit that it should become the law of this state.

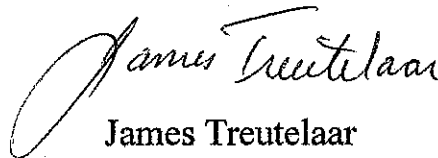
A handwritten signature in black ink, appearing to read "Mark R. Kelly". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Nov. 9, 2009

I appreciate this opportunity to testify in support of the Taylor Bill, SB 384. My name is James Treutelaar. Throughout my life I have worked with children as a high school teacher, coach and athletic director with the purpose of educating them and looking out for their wellbeing. This legislation that is being presented leaves no doubt in people's mind that the proper care of children is of utmost importance. It clearly points out that there is no bar to prosecution for inappropriate behavior regarding the health and safety of children. It reinforces the already existing law which gives the right to the State to step in and take custody of a child who is deemed to be in danger and to provide medical treatment as needed.

As someone who has seen the effectiveness of spiritual care in my own life, I support the language being proposed which provides for a fair trial if someone is charged in connection with the use of spiritual treatment. Clarity and fairness is what this bill is designed to provide. I ask, in the name of all those who rely upon spiritual treatment, that you support this bill. Thank you.

Sincerely,

A handwritten signature in cursive script that reads "James Treutelaar". The signature is written in dark ink and is positioned above the printed name.

James Treutelaar



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**SENATE BILL 384 SENATE HEARING
NOVEMBER 10, 2009**

I. BACKGROUND.

- My name is Jon Axelrod. I am a partner at DeWitt Ross & Stevens.
- We represent the Christian Science faith to address the legal issues pertaining to the various bills relating to prayer in lieu of medical treatment in the wake of the Neumann case.
- There are a few things you should know right off the bat.
- First, I am not a Christian Scientist. My testimony today is not motivated by personal religious convictions, but, rather, by my analysis of the law. I do not condone or oppose those who choose spiritual healing rather than medical treatment. Instead, I am a litigation attorney and appellate advocate who has handled a wide variety of constitutional cases in my practice, including cases, involving the free exercise of religion under the first amendment. I will tell you in a moment why I believe, in light of my legal analysis, that Senator Taylor's bill is a well-reasoned response to concerns about spiritual healing and parental neglect.
- Second, you should know at the outset, that the Christian Science Church strongly believes that child welfare should be of paramount importance and, further, that all parents should be held to the same standard of accountability as any other parents.
- Third, although the Neumann case has dominated the media discussion relating to these legal issues, you should know that the Neumanns are not Christian Scientists. That has not always been clear in the media coverage relating to this legislation, and I think it is important to note that at the outset.
- Fourth, the Neumanns were, in fact, convicted by a jury for their actions. That too, is sometimes lost in the discussion of these issues. Our justice system worked – but, that doesn't mean that we can't do better by addressing the laws that came into play during the Neumann trial. Senator Taylor has done that, in what we believe is a thoughtful and measured bill in a manner that comports with Wisconsin public policy, our system of justice and the constitution. We urge you to support this legislation. Please allow me now to tell you why.

- Fifth, I will attempt to present you with a balanced and reasonable approach to this issue without the emotional reaction which has characterized and exacerbated the debate so far.

II. SUPPORT FOR SENATOR TAYLOR'S BILL.

- With that introduction, we urge you to support Senator Taylor's bill, Senate Bill 384. The Bill serves two important goals: it protects children and prevents religious discrimination:
 1. First and foremost, Senate Bill 384 protects children.
 - It has long been the policy of this state that there is no exemption from properly caring for a child.
 - That duty extends to providing medical care for a seriously ill child.
 - The Wisconsin Supreme Court has made this clear in a 1986 decision in the case of *State v. Williquette*, 129 Wis. 2d 239, 385 N.W.2d 145 (1986), *quoting* 39 Am.Jur. *Parent and Child*, p. 669, sec. 46.
 - There, the court stated: "it is the right and duty of parents under the law of nature as well as the common law and the statutes to protect their children, to care for them in sickness and in health, and to do whatever may be necessary for their care, maintenance, and preservation, including medical attendance, if necessary. An omission to do this is a public wrong which the State, under its police powers, may prevent."
 - The Christian Science church supports senate bill 384 because it confirms the existence of that duty in two specific ways:
 - (1) Senate Bill 384 protects children by repealing Section 6 of Wis. Stat § 948.03 – this section is a part of the criminal child abuse law. It currently contains a provision that addresses "treatment through prayer." Senate Bill 384 removes this section of the law and makes our child protection laws clearer.
 - (2) Senate Bill 384 also protects children by amending the medical practice act – which reaffirms the State's ability to take immediate custody of an ill child and provide medical treatment with a court order.

- And under Senate Bill 384, no court order is necessary to provide medical attention for seriously ill children. Wis. Stat. § 48.19(1)d)5; 48.295; 48.345(6); and 48.20(4).
- And Senate Bill 384 protects children by not hindering the state's ability to prosecute a parent who neglects a child's medical needs. It repeals the religious accommodation in Wis. Stat. § 948.03(6) that the Neumanns claimed barred their prosecution altogether. The Neumanns lost on that claim -- they were prosecuted and convicted for their actions. However, we support making a change to the law that confirms that no parent should be able to evade prosecution for neglecting a child.

2. Second, Senate Bill 384 prevents religious discrimination. It promotes a fair trial and ensures that no one is discriminated against based on their religious beliefs in Wisconsin.

- The rights to a fair criminal trial and protections against discrimination of a criminal defendant have long been significant public policies in Wisconsin. These protections are embedded in our state and federal constitutions.
- The Court of Appeals of Wisconsin confirmed the importance of these public policy considerations, noting in a decision last year that "one of the essential ingredients of due process in a criminal trial is the right to a fair opportunity to defend against the state's accusations." This was the case of *State v. Jensen*, 2007 WI APP 256, ¶ 33, 306 Wis. 2d 572, 743 N.W.2d 468.
- Stated another way by our Wisconsin Supreme Court, "fair play is an important factor in the consideration of due process of law. Truly, the concern of due process is fundamental fairness." This was the case of *State v. Devalk*, 47 Wis. 2d 200, 205, 177 N.W.2d 106 (1970).
- Regretfully, Christian Scientists have been discriminated against in criminal prosecutions. They have been denied the right to tell their side of the story and that is contrary to our system of justice. Everyone is entitled to a fair trial, regardless of their race, gender, or religious beliefs.
- Senate Bill 384 prevents religious discrimination and promotes a fair trial by allowing the presentation of evidence in support of an affirmative defense that parents' reliance on spiritual healing was reasonable.

- To be clear, this provision does not provide immunity against prosecution. In other words, this “affirmative defense” does not stop a person from being tried for their actions or inactions. It means only that in a criminal prosecution, the defendant will be able to put in evidence as to their behavior. A defendant cannot claim a right to have his or her case dismissed before trial just by raising an affirmative defense. Instead, Senate Bill 384 simply ensures the right of a criminal defendant to present his or her defense by prohibiting religious discrimination.
- The bill lists a number of factors that may be relevant to determine whether their behavior was reasonable, such as the seriousness and length of a child’s illness, the likelihood that medical treatment would have been effective in treating it and the family’s experience with medical treatment and religious healing.
- It is important to understand that even if a parent presents evidence about each and every one of these factors, it does not mean he or she will be found innocent. The judge or jury must determine that the parent’s actions in using prayer were reasonable for the affirmative defense to apply.
- This is a case-by-case determination – not a one size fits all approach.
- That is the nature of our legal system – we judge persons by their conduct and their motivation for that conduct. It is the only way our criminal justice system will ever work fairly.
- Allowing parents with religious convictions to tell their story in a criminal prosecution is not “new ground.” Twenty-eight (28) states currently have religious provisions in their criminal child protection laws. Our neighbors, Minnesota and Iowa, both have provisions in their criminal code to ensure against religious discrimination in criminal prosecutions.
- Eight states have affirmative defenses in their criminal law. Importantly, the language of those provisions is generally broader than the language of the affirmative defense proposed in this bill. In none of those eight states, has the affirmative defense been successfully challenged on constitutional grounds. It is good law.

- Senate Bill 384 merely makes clear that a criminal defendant may present evidence to a judge or jury at trial that explains his or her reliance on spiritual healing. The proposal is consistent with existing Wisconsin law relating to affirmative defenses.
- The concept of “reasonableness” is not new to judges and juries in criminal cases. They are often asked to determine whether criminal defendants behaved reasonably in the context of other defenses. See, e.g., Wis II-Criminal, § 885 (asking whether a law enforcement officer acted reasonably in effectuating an arrest); or Wis II-Criminal, § 951 (regarding reasonable use of discipline by a responsible person).
- In determining reasonableness, “[t]he standard is what an ordinary, prudent, and reasonably intelligent person would have believed in the position of the defendant, acting under the circumstances that existed at the time of the alleged offense.” *Id.* This same standard would apply to judges and juries’ determinations under Senate Bill 384.

3. Finally, Senate Bill 384 is constitutional. It promotes due process under the Wisconsin Constitution Article 1, § 8. It does not violate the establishment clause in the Wisconsin Constitution, which is in Article 1, § 18, or the US Constitution’s First Amendment protections for religion. Senate Bill 384 promotes the free exercise of religion without any of the problems attendant in the Neumann case.

III. CONCLUSION.

- I want to conclude then by stating that Senator Taylor’s Bill makes good sense from a public policy standpoint.
- Senate Bill 384 upholds the standard that parents have a duty in Wisconsin to provide for their children, including medical care.
- Senate Bill 384 confirms that in the battle between a child’s welfare and the right of that child’s parents to practice religion, the child’s welfare trumps.
- The State may take immediate custody of a child that is ill or injured or is in immediate danger. A child taken into custody may be immediately delivered to a hospital or physician if the child is believed to be suffering from a serious physical condition that requires prompt diagnosis or treatment.
- Senate Bill 384 does not create a bar to prosecution for failing to provide medical treatment.

- However, Senate Bill 384 also makes clear that that criminal prosecution must be fair, and it must be conducted in a manner that prevents religious discrimination, by allowing a parent to tell his or her side of the story. This is no different than the rights we afford criminal defendants to explain their conduct in a variety of other contexts, such as when a criminal defendant claims that his or her conduct was motivated by self defense, defense of others, defense of property, or the privilege of reasonable discipline with children. Wis. Stat. § 939.45. The parent's conduct is judged by an objective standard of reasonableness.
- In this way, Senate Bill 384 supports the principle that criminal defendants should be afforded a full and fair opportunity to explain their conduct, which is one of the hallmarks of our justice system.
- We urge you to support Senate Bill 384.

Taylor Bill Hearing

**Testimony
Janet Chisholm
11/10/09**

Good morning. My name is Janet Chisholm, and I am speaking in support of the Taylor Bill.

Although I have lived in Madison for a number of years, I was raised in a small city in Oklahoma where I had a wonderful church experience as a Methodist. There was a strong sense of community and desire to care for others. In Sunday School, I was taught by research scientists who were employees of what was then called the Continental Oil Company. These scientists taught me to be a thinker and always to search for the truth. After I graduated from high school, I did begin a spiritual search which led me to Christian Science.

In comparing my experience as a Methodist and as a Christian Scientist, I can honestly say that both churches are filled with parents who love their children and work tirelessly for their protection and well-being.

As a Christian Scientist, I would never want a state law that benefits parents who neglect or abuse their children. As a parent, I can say unequivocally that I would never sacrifice the life of my child for my religious beliefs.

In my opinion, the Taylor Bill protects the rights of children and also gives parents involved in a court case the opportunity to explain the reasoning behind their actions. If I were a juror in such a case, I would certainly want to know the state of mind of the parents involved so that I could help render an informed verdict.

For these reasons, I support the Taylor Bill.

Thank you.

A handwritten signature in cursive script, appearing to read "Janet Chisholm".

Committee on Publication

Legislative Division

Wanda Warmack

**Written Testimony of Wanda Jane Warmack
in Support of SB 384**

Chairman Taylor, Vice-Chair Sullivan, and members of the Committee:

Thank you for the opportunity to address your committee in support of this necessary legislation.

I am Wanda Jane Warmack. I am an attorney, and for the last 14 years, I have served as the Manager of the Legislative Division of the Christian Science Committees on Publication at our church headquarters in Boston, MA. My division supports the work of local representatives around the world on governmental issues, including issues of child protection. Our efforts in this area are to support laws that promote health and well being of children. Equally important is that the laws we support DO NO HARM to children.

Why we support SB 384

We support SB 384 for three important reasons:

1. First, we are here in support of SB 384 because it would remove a law from the books that arguably promotes reckless parental behavior.
2. Second, we also support SB 384 because it adds needed clarity to the law concerning the State's ability to take immediate custody of a child and provide immediate medical attention without a court order for a seriously ill child.
3. Third, we support SB 384 because it addresses religious discrimination by promoting fair trials.

This bill does not create any special advantages or preferences for religious practices. However, it does provide a way for ensuring fundamental fairness when considering issues of spiritual healing in a court of law.

I would also like to offer three points concerning this bill:

1 - The first relates to the history of religious accommodations in child protection laws throughout this country.

2 - The second relates to the importance of preventing religious discrimination from affecting the outcome of prosecutions against parents accused of religious based medical neglect.

3 - The third relates to the reasons why SB 384 is constitutional.

History of religious accommodations in child protection law:

Forty-five (45) states, including Wisconsin, presently have at least one religious provision in their civil and/or criminal child protection laws. This includes all of the States that surround Wisconsin (See Appendix A). In fact, approximately one-half of these states already had such religious provisions prior to the passage of the federal Child Abuse Prevention and Treatment Act (CAPTA) by Congress in 1974. This is important because CAPTA has sometimes been blamed as imposing religious accommodations on states. Yet many states already had religious provisions in their statutes before its passage.

It is true that CAPTA's initial regulations required states seeking federal funding to have a definition of child abuse and neglect that included a religious provision. However, the regulations changed in 1983 and continuation of religious provisions became discretionary for each state as long as the state preserved its authority to intervene and require medical services when a child's health required it. The prevalence of such provisions in state law prior to CAPTA, and the continuation of such laws since 1983 by all but a few states, dispels the suggestion that the religious provisions in law today were somehow forced on the states. States have the freedom not to have religious provisions in their laws, but, nonetheless, 90% of the states have voluntarily chosen to include such provisions in their laws.

Following the regulatory changes in 1983, the federal Department of Health and Human Services (HHS) maintained a close watch on religious provisions in state law to ensure state compliance with the federal law. The federal government looked at the religious provision in Wisconsin's civil child abuse reporting law in the late 1980s and determined that it satisfied federal requirements for grant funds because it did not limit the State's authority to provide medical services to children whose parents were relying on spiritual healing. This is the same provision that remains in the law today.

We need SB 384 to ensure that religious parents will not be discriminated against at trial.

Why is it necessary to have religious provisions in child protection laws? Primarily, to address religious discrimination. These laws are not intended to give religious families special privileges or to shield reckless conduct that harms children. They are necessary to ensure that religious families relying on prayer for their care are treated fairly.

Reckless behavior that harms children should not be tolerated. It is also important to ensure that the criminal justice system operates fairly. Unfortunately religious discrimination does exist and our justice system has not always treated such cases on an even playing field.

The affirmative defense proposed in SB 384 will ensure that criminal trials in these delicate circumstances are conducted fairly.

SB 384 is constitutional

Both the Wisconsin and United States constitutions prohibit government from passing laws that favor or disfavor religion or establish a preference for one religion over another. *Jackson v. Benson*, 578 N.W.2d 602, 614-21 (Wis. 1998).

The courts have said that it is permissible for laws to accommodate religious practices without violating religious establishment standards even if free exercise principles do not require an accommodation. See, e.g.; *Cutter v. Wilkinson*, 544 U.S. 704, 719 (2005) (quoting *Employment Division, Department of Human Resources of Oregon v. Smith*, 494 US 872, 890, (1990); *Corporation of the Presiding Bishop of the Church of Jesus Christ of Latter-Day Saints v. Amos*, 483 U.S. 327, 334 (1987); *Children's Healthcare is a Legal Duty, Inc. v. Min de Parle*, 212 F.3d 1084, 1094, (8th Cir. 2000), *cert. denied* 532 U.S. 957 (2001).

The U.S. Supreme Court test (adopted by the Wisconsin Supreme Court in *Jackson v. Benson*) for whether a law violates religious establishment prohibitions has three parts:

- (1) does the law have a secular (i.e., a non-religious) purpose?
- (2) does the law have the primary effect of advancing or inhibiting religion?
and
- (3) does the law excessively entangle government with matters of religion?
(*Lemon v. Kurtzman*, 403 U.S. 602, 612-13 (1971); *Jackson*, 578 N.W.2d at 612, n.5.)

SB 384 satisfies all three parts of this test for constitutionality:

- 1) SB 384 has a non-religious purpose. It ensures that children are protected and that criminal trials will be conducted fairly.
- 2) SB 384 does not favor any particular religion or religion in general. It does not give religious individuals any benefits to which they are not already entitled. It does not place any burden on nonbelievers.
- 3) Finally, SB 384 does not excessively entangle the government in religion or religious beliefs. Nothing in the bill requires or permits a judge or jury to evaluate parents' religious beliefs. It merely allows parents to present evidence about their experience with spiritual healing. The judge or jury will assess this evidence along with the other facts of the case in deciding whether the parent is guilty of a crime.

Because SB 384 satisfies the *Lemon* test (as adopted by the Wisconsin Supreme Court in *Jackson*), it does not violate constitutional religious establishment principles, and is a permissible law that prevents religious discrimination.

CONCLUSION

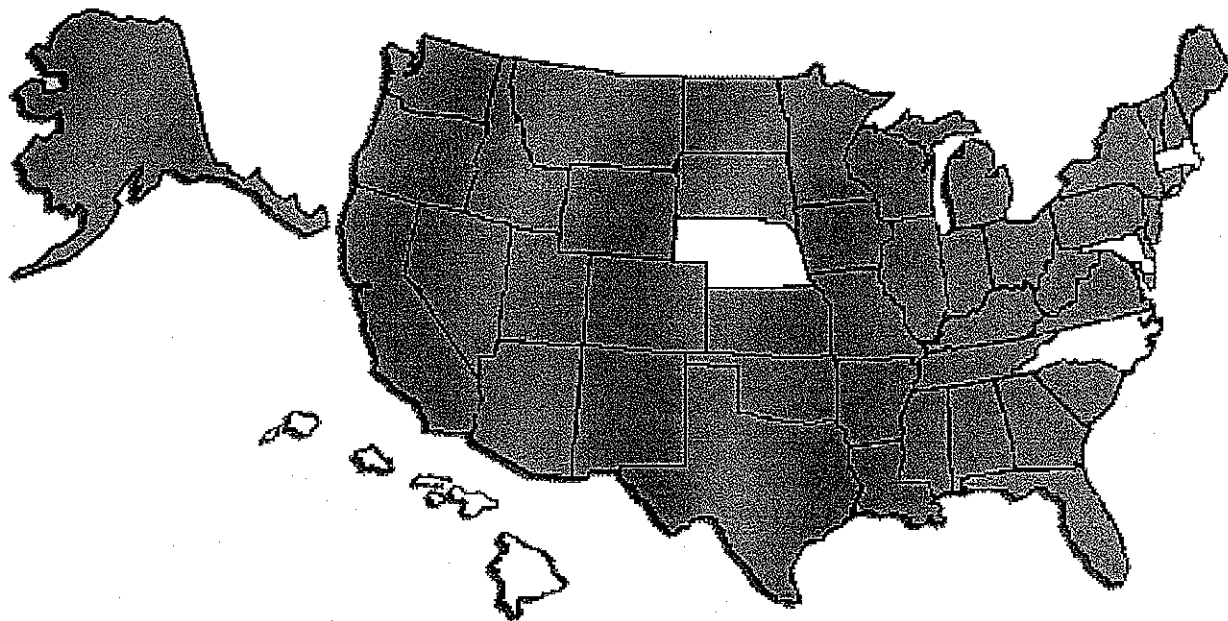
SB 384 promotes two fundamental and important aspects of our society: 1) the health and protection of children and 2) fairness in our criminal justice system. Because SB 384 serves both of these ends, we respectfully urge the members of this Committee support its passage.

Respectfully submitted,



Wanda Jane Warmack,
Legislative Manager,
Christian Science Committees on Publication
The First Church of Christ, Scientist
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States With Religious Accommodations



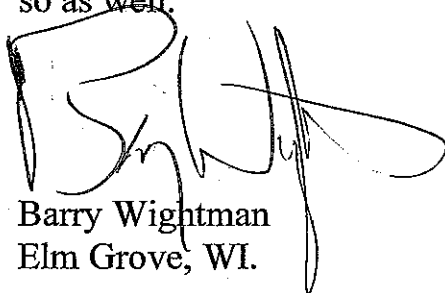
November 10, 2009

Good Morning Senator Taylor and Committee Members:

My name is Barry Wightman and I'm here to speak in favor of *Senate Bill 384* because it protects children by removing the criminal child abuse religious accommodation that the Neumann's defense attorneys used to try to shield prosecution. The bill also protects children by making it clear that the State can at any time go in to a home, take custody of a seriously ill child and provide medical treatment.

My wife and I were both raised in Christian Science and so were our three kids. They're all in their twenties now, happy, healthy and fully launched into life. As everybody knows, that's no small task. We saw many evidences of spiritual healing with our children, however, some years ago one of them was hit by a car while riding his bike and spent six weeks in a fine hospital. This was one situation where we just weren't prepared to handle it exclusively through prayer. We feel it's important to practice a reasonable and responsible use of spiritual treatment and prayer. Anyway, he recovered fully, but his doctors did say that as a result of his serious leg injury he might have trouble being fully mobile in the future. Turns out that that kid played high school tennis and college football and tennis, being named all Conference three times. Continued prayer for our son had a valuable role in that long-term healing—prayer does work: it promotes very good health outcomes for children.

I am in favor of the responsible and reasonable use of prayer that promotes the well-being of kids. The health and protection of all children is paramount. For these reasons I support *Senate Bill 384* and urge you to do so as well.



Barry Wightman
Elm Grove, WI.

Testimony in Support of Taylor Bill LRB-1147

My name is Robin Engel. I live at N3070 Highway 89 in Jefferson, Wisconsin. I am here to support the Taylor Bill because of its clear-headed thinking necessary to protect children.

The Christian Science church I belong to in Fort Atkinson was founded in the 1890s by pillars of the community. This Legislature honored its centennial anniversary. The individual contributions of our members to the community over the years have been significant and enduring.

My heart goes out to the Neumann family whose daughter died despite their best prayers.

The welfare of children transcends dogma and constitutional arguments.

Christian Scientists are responsible parents who pray with and for our children because it works.

My own children and grandchildren have been healed of medically-examined concerns including a hip-joint issue; hearing and speech impairment; and a contagious skin disease through the practical application of Christian Science.

Christian Science does not prohibit medical treatment nor do Christian Scientists think less of church members who use doctors. Some of us wear glasses; get broken bones set; and have surgical procedures. As a Christian Scientist I obey the law regarding quarantine of contagious diseases and vaccinations. I am grateful this state has strong child-protection laws and I support and obey them.

I commend you for your thoughtfulness in finding a solution that will protect children and provide fairness in a jury trial. Thank you for supporting the Taylor Bill.

Robin Engel

Cymbre Van Fossen

Legislative Testimony
November 10, 2009

Good Morning Senator Taylor and committee members. My name is Cymbre Van Fossen and I am a member of the Christian Science Church. I want to start by thanking you for taking the time to hear from members of the faith community in Wisconsin -- like me -- who feel passionately that prayer is a safe and effective means of maintaining the health and welfare of our children and families.

As a mother of three children -- twin girls age 12 and a little boy age 9 -- my first priority is the well-being of these children. Nothing is more important to me than their safety, health and happiness. However, I also respect the need of the State to insure that all children, regardless of religious affiliation, are protected from harm. Therefore, I support the proposed legislation that gives parents the legal framework in which to present information about their spiritual background and history of success in relying on prayer for healing, as an affirmative defense in the event of a jury trial.

My own family has had innumerable physical healings throughout the years -- everything from colds and coughs, rashes and fevers, to healings of medically diagnosed instances of strep throat, anemia, and abnormal hip development in a child. I'd like to share the details of one experience, as it demonstrates how a prayerful approach to healing for children can be accomplished within the framework of medical care and oversight.

When my son was first born he was given a full check-up by the attending pediatrician at the hospital. She noted that he had a condition that she referred to as crepitus or a "hip click." The sound when his leg was moved was an indication that his left hip could easily come out of joint. She said that if the condition wasn't attended to properly it could result in our son not walking properly, if at all. She suggested that we have him fitted for a brace that could wear for quite a few months that would hold the leg in position and hopefully solve the problem. The doctor could not guarantee however that the brace would be a complete or successful fix. She also offered no hope that this was a problem that our son would just grow out of over time. I was uncomfortable with the idea of putting a brand new baby into a brace for such a long period of time, and I felt strongly that God's love for this innocent little baby could be realized in a complete and quick healing through prayer.

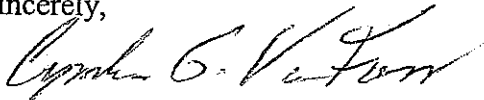
I spoke with my husband, who was not a Christian Scientist, about the matter. We agreed that we would bring the baby back to the clinic at two months for his regularly scheduled immunizations and have his hip checked at this time. If no progress was evident, then I was willing to go with whatever course of action the doctor recommended. I did pray diligently about this matter over the two month period and got assistance from a Christian Science practitioner -- someone who prays for healing on a full-time professional basis. When we returned for the two-month check-up the doctor specifically looked for evidence of the hip click, and could find nothing! I still have the "before" and "after" health care exam sheets. I especially love the sentence on the two month exam that says

"Healthy 2 mo. old boy. No hip clicks/clunks." My son is now nine years old, plays Little League and basketball, and is extremely active with absolutely no evidence of any trouble with his hips.

I bring all these personal details to the committee's attention to emphasize that Christian Scientists are responsible in their use of prayer on behalf of children. If prayer was ever used as a primary means of healthcare, and not found to be quickly meeting the needs of my child, I would not hesitate to use medical care. However, the fact is that in my own life, and that of my three children, we have found that turning to God has met our healthcare needs beautifully. It is important that parents who employ spiritual healing be held to the usual standards of care expected of any parent. But, it is also important that they be allowed to share with courts and juries the context and history of their reliance on healing prayer, if the efficacy of that prayer is ever called into question.

I thank the Committee for their time and attention to this important matter.

Sincerely,

A handwritten signature in cursive script, appearing to read "Cymbre G. Van Fossen".

Cymbre G. Van Fossen
2914 Maple Run Drive
Madison, WI
(608) 288-9778



Christian Science Committee on Publication for Wisconsin

Testimony of Joseph G. Farkas In Support of SB 384

Thank you for this opportunity to present testimony in support of SB 384. My name is Joseph Farkas. I am the legislative and media liaison for the Christian Science Churches and Societies in Wisconsin. I am also a Christian Science practitioner - someone who provides help through prayer at the request of individuals who have chosen to rely on spiritual means for healing as taught in Christian Science.

The protection of children is of paramount importance. I am here today to testify in support of this bill because I believe that it works to protect children in a number of different ways. It will clarify the applicability of Wisconsin's existing child protection laws, which allow parents to choose spiritual healing for their children in cases of non-serious illness. It also will ensure that parents who choose prayer for their children's health care needs will receive a fair trial and a full opportunity to tell their story in the unfortunate event that a child is injured or dies due to a failure to provide medical treatment.

The Christian Science church has always supported the protection of children. The Christian Science Monitor has run many articles highlighting the abuse of children and calling for solutions. We do not feel it is the will of God for children to suffer or die. Last year in the Neumann case, parents claimed they couldn't be prosecuted because of a section in the Wisconsin criminal child abuse law concerning prayer. The judge did not agree with their interpretation and a jury found the couple guilty of 2nd degree reckless homicide. The Neumanns were not Christian Scientists or members of any other denomination. Even though the Neumanns were found guilty, many people have been given the impression that the section concerning prayer in the criminal child abuse law is a shield to prosecution in Wisconsin. This is deeply troubling because laws that accommodate spiritual healing practices should NEVER insulate parents from providing timely and effective care for their children or permit them to behave recklessly or irresponsibly toward their children's needs. This bill addresses the concerns raised by the Neumann case by repealing the section concerning prayer in the criminal child abuse statute.

This bill also clarifies the Wisconsin Medical Practices Act, which is a licensing part of the law. Currently, the language of that Act states that the laws of medicine or surgery "may not be construed to interfere with" the practice of Christian Science. Wis. Stat. Ann. § 448.03(6). Some have expressed concern that the language of this accommodation could be read to as superseding Wisconsin's child protection laws. This bill addresses this concern by clarifying that this is



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not the case. Parents are required to comply with the existing child protection laws, and the State can take immediate custody of and provide medical treatment to children who are ill or injured.

Finally, this bill would allow for the presentation of evidence during a criminal trial in an attempt to prove that parents' reliance on spiritual care was reasonable as an affirmative defense. I am not a lawyer, and you will hear other testimony about the effect of this section. However, I can say that this provision would not serve as a bar to prosecution. It is not an exemption. The factors that are listed in the bill help to identify the kinds of evidence that might be relevant to a determination of whether conduct was reasonable. Just because a defendant presents evidence about any or all factors does not mean that the jury would find him or her innocent. The judge or jury would need to review all of the evidence and determine whether the parents acted reasonably based on the individual facts of the case. What SB 384 does is to make sure that evidence about all of the relevant facts may be presented at trial. The intent of this provision is to make sure that trials are fair.

I have been a practicing Christian Scientist since 1994. I would like to take just a moment to address one unfortunate and very basic misconception about the practices of my church. The Christian Science Church does not dictate the health care choices of individual members or tell them that they can't go to doctors. It is always up to an individual to choose the form of health care they believe is best. I must add that I routinely turn to prayer for my own health needs and those of my family not because the Christian Science church requires it, but because I have found prayer to be an effective means of healing time and time again. Simply put, I use prayer because I have seen that it works.

I am aware that my choice to rely on healing through prayer rather than medical treatment is out of step with the majority view. I have seen quick and effective results from prayer for myself and my children, and I expect and will tolerate nothing less than quick and effective results. However, I also believe that those who reasonably use prayer for their children's health care needs should be assured that they will be allowed to explain the basis for their decision to a judge or jury in the event that a tragedy occurs. I must add that I hope that this provision will never have to be used.

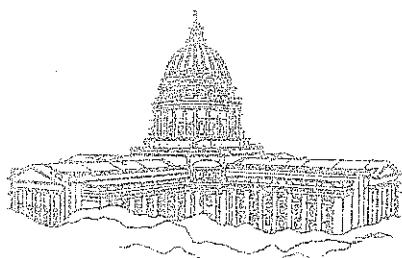


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This bill is about safeguarding children and providing fundamental fairness in criminal cases. Opponents and Supporters of this bill join in one common

purpose: DO NO HARM to children. Spiritual healing is at the heart of this issue. Laws can be passed that protect children and accommodate the reasonable use of spiritual healing for children's health care needs. This is such a bill and we ask that it be voted out of this Committee. Thank you.

Joseph A. Barber



LENA C. TAYLOR

Wisconsin State Senator • 4th District

HERE TO SERVE YOU!

Testimony of Senator Lena C. Taylor
Committee on Judiciary, Corrections, Insurance, Campaign Finance Reform, and Housing
2009 SB 384—Freedom of Choice of Faith Act
Tuesday, November 10, 2009

Honorable members of the committee,

Thank you for taking testimony relating to Senate Bill 384 – the Freedom of Choice of Faith Act, a piece of legislation relating to a person's constitutional right to practice their faith healing beliefs and the exemptions in law regarding prosecution of crimes.

The unfortunate case of the Neumann family in Wausau has drawn attention to the issue of electing spiritual or Christian Science treatment in lieu of medical or surgical treatment for a child. The Freedom of Choice of Faith Act modifies current law to further protect the child.

Current law provides exemption to prosecution for parents or guardians who elect spiritual healing in lieu of medical treatment for their child. This bill repeals this exemption to prosecution.

Also, under current law, individuals choosing Christian Science treatment cannot be compelled to submit to medical or surgical treatment. SB 384 mandates the use of medical treatment as required when a child is taken into custody because the child is in immediate danger from his or her surroundings. To be clear, law enforcement can determine at their discretion when any child is in danger and immediately remove the child from the home under current law. This bill says that medical treatment must be given if the child is in need of medical treatment.

To protect the rights of practice of faith, this bill creates an affirmative defense for parents or guardians when their conduct is in good faith and is a reasonable use of spiritual, prayer or religious treatment in lieu of medical treatment. However, by using an affirmative defense, the burden of proof goes to the defendant to prove that they were or are capable of faith healing.

Lastly, in applying that affirmative defense, the bill provides direction to the presiding judge by outlining nine factors relevant to determining whether the use of spiritual, prayer or religious treatment in lieu of medical treatment was indeed reasonable.

There will be many persons testifying today on this bill. I encourage you to listen carefully to each. The goal of this bill is to find the balance to protecting children and ensuring we do not violate the first amendment rights of our citizens. I encourage you to review it closely and ask for your support of this legislation.